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# Guide to the PSA Violent Offense List

*After reading this guide, project leaders will be prepared to help their implementation team complete their state's PSA Violent Offense List. They will be able to explain the definition of "violent offense" as it is used with regard to the PSA; facilitate their implementation team's discussion of the list; and answer common questions about categorizing violent offenses.*

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## Introduction

All jurisdictions using the PSA are required to identify the state-specific offenses that will be considered "violent" for purposes of scoring the PSA and measuring the pretrial outcome of violent criminal activity. Two of the nine risk factors the PSA uses—Current Violent Offense and Prior Violent Conviction—cannot be scored unless your jurisdiction creates a PSA Violent Offense List. Neither the assessor nor the judicial officer should use a description of the circumstances surrounding the current offense or any information about a prior conviction as the basis to score these risk factors. Rather, when a person is charged with or has been previously convicted of a criminal offense, an assessor must determine whether it is on your jurisdiction's PSA Violent Offense List. The list must ultimately include all of the criminal codes for offenses your jurisdiction considers violent for purposes of scoring the PSA and measuring outcomes.



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This guide walks you through the steps necessary to complete your jurisdiction's PSA Violent Offense List.

An offense is categorized as violent for purposes of the PSA if a person causes or attempts to cause physical injury through use of force or violence against another person. A charge of attempt (such as attempted murder or attempted robbery), being an accessory before the fact, solicitation, or conspiracy to commit any of these offenses is considered a violent offense.

The **Public Safety Assessment** is a pretrial risk assessment developed by the Laura and John Arnold Foundation (LJAF) to assist jurisdictions in making pretrial decisions. The PSA predicts pretrial risk of failure to appear (FTA), new criminal activity (NCA), and new violent criminal activity (NVCA). Other materials at psapretrial.org provide general information about the PSA and improving the pretrial system—for instance, the benefits of adopting a pretrial risk assessment, how the PSA was developed, and how it works.

## Definition of Violent Offense

To complete the PSA Violence Offense List, it is critical that your implementation team has a common understanding of the PSA definition of a violent offense.

For the purposes of completing the PSA, an offense is categorized as violent if a person causes or attempts to cause physical injury through use of force or violence against another person. To ensure fidelity to the PSA and consistency with its underlying research, a jurisdiction **must** use this definition when creating its PSA Violent Offense List. You may not use a different definition based on law or policy.

## Offenses Categorized as Violent

The following are the most common violent offenses:

- murder
- homicide
- manslaughter
- kidnapping
- abduction
- robbery
- carjacking
- arson
- assault involving physical injury (including domestic assault)
- person-to-person sex offenses (such as sexual assault or sexual abuse)

Again, a charge of attempt (such as attempted murder or attempted robbery), being an accessory before the fact, party to a crime, solicitation, or conspiracy to commit any of these offenses is considered a violent offense.

When developing and validating the PSA, the researchers did not categorize the following as violent offenses:

- involuntary crimes of recklessness and negligence, unless they are charged at the level of manslaughter or homicide; or
- offenses involving threats, intimidation, harassment, and similar behavior—with the exception of stalking, which is categorized as violent.

For the sake of consistency and to maintain the PSA's fidelity, your jurisdiction should *not* categorize these offenses as violent.

## Completing a Violent Offense List

### ***Step 1: Download your state's current or preliminary PSA violent offense list.***

PSA violent offense lists already exist in each of the growing number of states where at least one locality has implemented the PSA. For each of the remaining states, LJAF has prepared a “preliminary list” of state criminal codes that meet the PSA definition of violent. The first step in completing your jurisdiction’s PSA Violent Offense List is to locate your state’s current or preliminary list at psapretrial.org.

If your state has a current list, there may be a policy regarding its uniform use. If so, you should speak with state administrators and be sure to obtain and use the approved list.

Each preliminary list is an Excel spreadsheet with two tabs. The first tab provides a complete list of the state criminal codes that LJAF reviewed. The second tab has a list of offenses that appear to meet the PSA definition of a violent offense, according to LJAF staff. Offenses whose categorization is uncertain are marked as such and should be discussed by the implementation team.

Each current list includes only the violent offenses your state or other jurisdictions in your state have designated as violent for purposes of completing the PSA.

### ***Step 2: Review the list with your implementation team or subcommittee.***

Whether you are starting with a current or preliminary list, the implementation team must review the list and decide whether and how it needs to be modified. Many sites that use the PSA found it useful to form a subcommittee of judges, prosecutors, and defense attorneys to conduct an initial review of the list and decide whether any offenses needed to be added or removed.

At the meeting to review the list, it may be helpful for participants to go over the PSA definition of a violent offense, to gain a shared understanding of it. You can use prepared presentation materials to do this. (See 10A. Violent Offense List Presentation.)

The implementation team (or subcommittee) should then do the following:

- If starting with a preliminary list, discuss and address the offenses marked as uncertain; and
- For either type of list, determine whether any offenses are miscategorized: That is, should any offense categorized as violent be removed and should any offense not listed be categorized as violent?

At the meeting, each participant should have a copy of the initial list and the group should go through each offense one by one. It may also help to have the full text of the criminal code available for purposes of context and discussion. A note taker should document the group’s decisions as people discuss each offense.

If your state has a statutory list of violent offenses, or if state law defines which offenses are violent, those may belong on the PSA violent offense list; but the implementation team should confirm that they meet the PSA definition of violent.

If your implementation team starts with a current list, the team should be aware that experts and other stakeholders in another locality from your state created the list, and it was likely finalized in consultation with LJAF. Nevertheless, if your team decides to recategorize any offenses, you are encouraged to talk about those differences with the people who created and use the list in the other locality. Disparities in violent offense lists can lead to inconsistent PSA scores within a state, and this may lead to inconsistent treatment of defendants in different localities.

The implementation team (or subcommittee) must also review repealed or reclassified statutes, as those offenses may exist in defendants' state criminal history records. This is critical because one of the PSA risk factors is any *prior* violent conviction. If statute numbers have changed, you must document the old statute number to capture the full universe of offenses that meet the definition of violent for purposes of scoring the PSA accurately.

**Note:** If the statute as written includes person-to-person violence and uses descriptions such as "use of force or violence" or "attempted or caused physical injury," the offense is categorized as violent. This is consistent with the research conducted to develop the PSA and with its implementation in all jurisdictions already using it.

The frequently asked questions in the next section should help you resolve questions that may arise during this discussion. You can also contact the PSA Help Desk at [psapretrial.org/helpdesk](http://psapretrial.org/helpdesk) for additional guidance.

***Step 3: Present the list of violent offenses to the implementation team for approval.***

After the subcommittee finishes reviewing the current or preliminary list and prepares its list of violent offenses, the group members should present it to the full implementation team for further discussion and final approval. This meeting can be conducted in a manner similar to that of the subcommittee meeting.

Upon final approval by the implementation team, you'll need to incorporate your jurisdiction's PSA Violent Offense List into your PSA Scoring Manual, so that when assessors score the PSA, they can easily determine whether the charge code(s) specified refer to a violent offense. If IT staff are programming a data system to auto-populate the PSA application, they will also need the final list.

## Frequently Asked Questions

Contact the PSA Help Desk at [psapretrial.org/helpdesk](http://psapretrial.org/helpdesk) if you have questions the FAQs do not address.

**Q:** Our state has a statutory list of violent offenses that is used for purposes other than the PSA. Can we use that list for the PSA?

**A:** The implementation team should confirm that each of the violent offenses on the statutory list meets the PSA definition of violent. Your starting point for creating the PSA Violent Offense List should be your state's current or preliminary PSA list, whichever exists for your state. The lists are available at [psapretrial.org](http://psapretrial.org).

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**Q:** How do we deal with a charge code that includes behavior that meets part of the definition of violent but not another part?

**A:** A code is either on or off your violent offense list. If an offense involves aspects that meet the definition and others that do not meet the definition, many jurisdictions err on the side of including the offense on its violent offense list. But if there is evidence and local consensus that such classification would dramatically over-categorize defendants as violent, do not include the offense on your list.

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**Q:** Is intent to commit violence required to meet the PSA definition of violent offense?

**A:** Yes, almost always. The only exceptions are involuntary murder and involuntary manslaughter.

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**Q:** If a criminal code specifies the intent to do physical injury to a person and also specifies that physical injury need not occur, is the offense violent?

**A:** Yes, the offense is categorized as violent.

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**Q:** How do we treat a child sex offense that involves conspiring, soliciting, or facilitating a child to perform an act of sex but does not involve any direct contact?

**A:** Any offense that causes a child to perform an act of sex is categorized as violent.

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**Q:** Which firearm offenses are classified as violent?

**A:** Any use of a firearm against a person is categorized as violent. For instance, pointing or shooting a firearm at someone is categorized as violent. Possession of a firearm is not categorized as violent.

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To view or download all implementation guides, go to [www.psapretrial.org/guides](http://www.psapretrial.org/guides)

**Q:** How do we treat arson offenses?

**A:** Arson is categorized as violent when it targets an occupied or presumably occupied structure. For example, setting fire to an apartment building would be categorized as violent; setting fire to a toolshed typically would not.

**Q:** Our jurisdiction uses numerous assault and battery charges for a range of behaviors. Some charges involve injury and others do not. Are all assault and battery charges treated similarly?

**A:** All assault and battery statutes were included in the definition of violent offense in the original research underlying the PSA. But if your implementation team agrees that the application of a specific criminal code does not meet the intent of the PSA definition of a violent offense, you should not label it as violent and designate it for future review once you're using the PSA.

**Q:** Why do we score the Current Violent Offense and Prior Violent Conviction risk factors based on a list of criminal codes and a strict definition? Shouldn't we examine the circumstances in each case to determine whether the offense is truly violent?

**A:** Across all PSA sites, assessors (or in some cases, the software) use a list of criminal codes to determine whether the current charge or a prior conviction is considered a violent offense. In most of these jurisdictions, police reports and jury instructions—or other resources that may provide the contextual circumstances surrounding the offense—are not readily accessible during the process of scoring the PSA. In addition, when assessors examine prior violent convictions from in-state and out-of-state criminal histories, they likely know only the relevant statutes, not the context of the alleged offense. As a result, and for practical purposes, the PSA definition of a violent offense must be statute-based. Regardless, the circumstances of the case can always be presented to the judicial officer who is making a pretrial decision.

**Q:** What are the offenses that other PSA sites have included in their list of violent offenses?

**A:** Several PSA sites have made their list of violent offenses available for review at [psapretrial.org](http://psapretrial.org).

**Q:** Are driving under the influence (DUI) or driving while intoxicated (DWI) considered violent offenses for purposes of scoring the PSA?

**A:** Typically, no, because DUI and DWI offenses usually do not involve violent intent.